In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 17995-CAT of 2001

Date of Decision: 20.9.2006

Union of India and others.

....Petitioners.

Versus

R.P. Sharma and another.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. Anil Rathee, Advocate
for the petitioners.

Mr. G.C. Babber, Advocate
for respondent No.1.

...

J.S. Khehar, J. (Oral).

Respondent No.1 was inducted into the employment of the petitioners as a Lower Division Clerk on 14.12.1964. He was promoted as Upper Division Clerk on 2.1.1970. Having qualified the departmental test of P & T Part-I, he was further promoted to the post of Junior Accountant, after having completed his training at Kanpur. Respondent No.1 then qualified the departmental test of P & T Part-II, and was promoted as Accounts Officer w.e.f. 17.11.1983.

Onward promotion from the post of Accounts Officer is to the post of Senior Accounts Officer, for which a meeting of the Departmental Promotion Committee was convened on 24.6.1993. The claim of respondent No.1 was placed before the Departmental Promotion Committee

in a list, wherein his name figured at Sr. No.247. During the course of the proceedings of the Departmental Promotion Committee held on 24.6.1993, respondent No.1 was found suitable for promotion to the post of Senior Accounts Officer w.e.f. 1.4.1987 (notional for pay fixation) and for promotion w.e.f. 1.4.1992 (actual). In the aforesaid recommendations made at the hands of the Departmental Promotion Committee, the name of respondent No.1 figured at Sr. No.184.

The recommendations made on the basis of the proceedings conducted by the Departmental Promotion Committee on 24.6.1993, were given effect to by an order dated 2.11.1993. Despite the recommendation of the name of respondent No.1 by the Departmental Promotion Committee, he was not granted the benefit of the recommendation, for the reason, that after the recommendations of the Departmental Promotion Committee, and before persons who were considered alongwith respondent No.1, were actually granted the benefit thereof by the issuance of a consolidated order of promotion on 2.11.1993, respondent No.1 had been issued a charge-sheet dated 6.8.1993.

It is the aforesaid action of the petitioners, in not giving respondent No.1, the benefit of the recommendations made by the Departmental Promotion Committee, which compelled him to approach the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the Administrative Tribunal), by filing Original Application No.270/HR/1995, claiming the said benefit. The claim raised by respondent No.1 through the aforesaid Original Application was accepted by the Administrative Tribunal, by an order dated 26.7.2001, requiring the petitioners to grant promotion to respondent No.1 on the basis

of the recommendations made by the Departmental Promotion Committee with effect from the same date, the benefit had been given to those junior to respondent No.1 vide promotion orders dated 2.11.1993.

The determination rendered by the Administrative Tribunal in Original Application No.270/HR/1995, on 26.7.2001, is subject matter of challenge at the hands of the employer of respondent No.1 through the instant writ petition.

While impugning the determination rendered by the Administrative Tribunal, learned counsel for the petitioners has primarily relied on the policy instruction issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, dated 14.9.1992. In so far as the aforesaid policy instruction is concerned, learned counsel for the petitioners has invited this Court's attention to paragraphs 2 and 7 thereof. Paragraphs 2 and 7 of the policy instruction dated 14.9.1992, which are subject matter of interpretation in the present controversy, are being reproduced hereunder:-

> "2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-
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> (i) Government servants under suspension;
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> (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
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> (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

> 7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

Relying on paragraph 7 extracted above, it is the vehement contention of the learned counsel for the petitioners, that irrespective of the recommendations at the hands of the Departmental Promotion Committee for promoting an employee to a higher post, if before the issuance of a promotion order, the concerned employee is issued a charge-sheet for holding a regular departmental enquiry, the recommendations made by the Departmental Promotion Committee have to be placed in a sealed cover, so as to be given effect to, only if the concerned employee is completely exonerated of the charges levelled against him. In so far as, the latter part of the submission is concerned, learned counsel for the petitioners, has placed reliance on paragraph 3 of the policy instruction dated 14.9.1992, which is also being extracted hereunder:-

> "3. If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and

having regard to the penalty imposed on him."

Having given our thoughtful consideration to the contention of the learned counsel for the petitioners and the response thereto by the learned counsel for the respondent, we are of the view, that the policy instruction relied upon by the learned counsel for the petitioners may have been made applicable to the issue of promotion of respondent No.1 from the post of Accounts Officer to the post of Senior Accounts Officer, since it is not factually disputed, that the recommendations of the Departmental Promotion Committee were based on deliberations held on 24.6.1993, whereas promotion orders on the basis thereof, were made on 2.11.1993, and specially because the charge-sheet issued to respondent No.1 was between the aforesaid two dates i.e. on 6.8.1993. It is, therefore apparent, prima-facie, that the policy instruction dated 14.9.1992 could have been made applicable to the claim of respondent No.1 for promotion to the post of Senior Accounts Officer.

Despite the acceptance of the contention of the learned counsel for the petitioners, as well as, the relevant dates of consideration and deliberations, namely, the date on which the Departmental Promotion Committee held its proceedings, the date on which promotion orders were issued on the acceptance of the deliberations of the Departmental Promotion Committee, as well as, the date when respondent No.1 was issued a charge-sheet, it is asserted on behalf of the learned counsel representing respondent No.1, that instruction dated 14.9.1992 cannot be deemed to be applicable to the claim of respondent No.1 for promotion to the post of Senior Accounts Officer. It is the vehement contention of the learned counsel for the respondent, that he could not have been denied promotion under the policy

instruction dated 14.9.1992, because an employee can be denied promotion with reference to a particular date, only on the basis of the allegations, preceding the said date. In so far as, the present controversy is concerned, it is the vehement contention of the learned counsel for the respondent, that the relevant date of consideration, in so far as the present controversy is concerned, must be deemed to be 1.4.1987 as the suitability of respondent No.1 for promotion, from the post of Accounts Officer to the post of Senior Accounts Officer, was determined by the Departmental Promotion Committee with reference to 1.4.1987. In terms of the recommendations made by the Departmental Promotion Committee, respondent No.1 would be entitled to the notional benefit of the pay scale of the post of Senior Accounts Officer with reference to 1.4.1987. Coupled with the aforesaid submission, it is the contention of the learned counsel for the respondent, that none of the charges leveled against respondent No.1 in the charge-sheet dated 6.8.1993 was in respect of any allegation pertaining to a period preceding 1.4.1987, and as such, the charge-sheet dated 6.8.1993, as also, the consequential result thereof, cannot be taken into consideration for determination of his suitability for promotion to the post of Senior Accounts Officer with reference to 1.4.1987.

Having considered the submission of the learned counsel for the respondent, as has been noticed hereinabove, we find merit therein. It is now well settled, that for consideration of the claim of an employee for promotion with reference to a particular date, his Annual Confidential Reports, preceding that date, alone can be taken into consideration for promotion. Likewise, his work and conduct preceding that date, must alone be taken into consideration. Since the charges contained in the charge-sheet

issued to the petitioner dated 6.8.1993, were admittedly for the actions/conduct stated to have occurred after 1.4.1987, neither the charge-sheet nor the consequential result thereof, could have been taken into consideration against respondent No.1, for purposes of determination of his claim for promotion to the post of Senior Accounts Officer.

In view of the above, it is not possible for us to accept the solitary contention of the learned counsel for the petitioners for denying promotion to respondent No.1, from the post of Accounts Officer to the post of Senior Accounts Officer on the basis of the deliberations conducted by the Departmental Promotion Committee, on 24.6.1993. In our considered view, the policy instruction dated 14.9.1992, specially paragraph 7 thereof, can only be made applicable to cases wherein charges contained in a charge-sheet (though issued after the recommendations made by the Departmental Promotion Committee) pertain to allegations relating to a period before the date of promotion with effect from which the said recommendation has been made.

For the reasons recorded above, it is not possible for us to accept the contention of the learned counsel for the petitioners, although, for reasons, which differ from the reasons recorded by the Administrative Tribunal.

Dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

20.09.2006
sk.